THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.21835 of 1999

Dated : 24.04.2007

Between:

Midwest Granites Private Limited,
6-3-802, Zainab Commercial Complex,
Ameerpet, Hyderabad, represented by its
Chairman K.Raghava Reddy.

… **PETITIONER**

And:

The Government of Andhra Pradesh,
Industries and Commerce (Mines II) Department,
represented by its Principal Secretary,
Secretariat Buildings, Hyderabad and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.21835 of 1999

ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings of the second respondent, dated 07.07.1997, and the Memo dated 06.10.1999 issued by the first respondent as arbitrary and illegal and for a consequential direction to the respondents to grant quarry lease in favour of the petitioner in an extent of 3,000 hectares in Sy.No.97/1 of Kesamudram village of Warangal District.

Petitioner has been carrying on business in extraction and processing of granite. It made an application to the second respondent for grant of quarry lease of black granite over an extent of 3,000 hectares in the said survey number, who, in turn, referred the same to the Deputy Director of Mines and Geology, Warangal for his report.

After conducting survey and demarcating the land, the Deputy Director of Mines and Geology recommended for grant of quarry lease in favour of the petitioner. Subsequently, the second respondent directed the petitioner to submit Mineral Revenue Clearance Certificate from the Assistant Directors of Mines and Geology of Nizamabad, Khammam, Warangal, Karimnagar and Prakasam Districts. Accordingly, petitioner submitted application to the Assistant Director of Mines and Geology for issue of Mineral Revenue Clearance Certificate.

Meanwhile, petitioner filed W.P.No.7284 of 1995 seeking a declaration that the provisions of Rule 12(5)(c) "Note" of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules"), as *ultra vires* the Mines and Minerals (Regulation and Development) Act, 1957. Under the said Rule, seigniorage fee shall be levied in respect of granite blocks exported to the places outside the State of Andhra Pradesh. The said writ petition, along with the other connected writ petitions, was allowed by a Division Bench of this Court declaring the said Rule as *ultra vires*, and by an order dated 26.04.1996 passed in the said writ petition, the Division Bench directed the respondents to return the extra seigniorage fee paid by the petitioner. Questioning the said order, the Government filed S.L.P.Nos.2150 to 2152 of 1997 in the Supreme Court, and they were also dismissed on 24.10.1997 confirming the order passed by this Court. Thereafter, petitioner filed Contempt Case No.617 of 1998 against the respondents for not adjusting or refunding the amount collected from the petitioner, and the Government filed Memo dated 04.06.1998 permitting the Director of Mines and Geology to adjust the amounts due to the petitioner, and accordingly, the Contempt Case was closed. Subsequently, petitioner filed another Contempt Case, being C.C.No.855 of 1999, for not adjusting the excess amount paid by it from the date of inception of the said Rule, and the same was dismissed on 29.09.1999, but the petitioner was granted three months time for payment of the dues.

The second respondent also addressed another letter, dated 13.03.1997, to the petitioner directing to submit the Mineral Revenue Clearance Certificate. On receipt of the said letter, petitioner requested the authorities to adjust the extra seigniorage fee paid by it, as per the directions issued by this Court dated 26.04.1996. The respondents have neither adjusted the amount nor granted the said certificate. Subsequently, the second respondent, by his proceedings dated 07.07.1997 rejected the application of the petitioner on the ground that it failed to submit the Mineral Revenue Clearance Certificate. Aggrieved thereby, petitioner preferred a revision before the first respondent, and the first respondent dismissed the said revision on the ground that the petitioner failed to produce the Mineral Revenue Clearance Certificate. Hence, this writ petition.

A detailed counter is filed by the respondents stating that the Government has framed rules for levy of double seigniorage fee in respect of granite blocks exported in raw form to the places outside the State of Andhra Pradesh, except the granite exported through ports and shipyards within the State, and accordingly, the same was collected from 15.07.1992. Subsequently, as per the order of this Court dated 04.08.1995 declaring the note under Rule 12(5)(e) of the Rules as *ultra vires*, the excess amount paid by the petitioner from 04.08.1995 was adjusted towards the future demand. It is further stated that as the petitioner failed to submit the Mineral Revenue Clearance Certificate despite issuing notices, the original authority dismissed the application of the petitioner. It is also stated that as the cut off date for adjustment/refund of the excess seigniorage fee is 04.08.1995, the petitioner cannot claim for adjustment of the excess fee paid by it from the inception of the said Rule.

Heard the learned counsel for the petitioner and the learned Government Pleader for Industries.

Learned counsel for the petitioner submits that the first respondent dismissed the revision filed by the petitioner without considering the three months' time granted by this Court on 29.09.1999 for payment of the arrears due, and therefore, the same is liable to be set aside.

Per contra, learned Government Pleader submits that despite granting sufficient time, the petitioner has not produced the clearance certificate from the authorities concerned, and therefore, the first respondent dismissed the revision filed by it on that ground alone.

Prima facie, I find force in the submission made by the learned counsel for the petitioner that the revisional authority dismissed the revision filed by the petitioner without considering the time of three months granted by this Court for payment of arrears. Though this Court declared the note incorporated to Rule 12(5)(e) of the Rules as *ultra vires*, the Apex Court initially suspended the said order, but later dismissed the Special Leave Petition filed by the Government. From the above it is clear that for the period commencing from 04.08.1995 the seigniorage fee shall be collected as per the unamended provisions, and if any excess fee is paid subsequent to the cut off date, it shall be adjusted towards the future demand. In Contempt Case No.855 of 1999, the Division Bench held that the petitioner shall pay double the seigniorage fee for the period in dispute, as per the amended provision of law, and accordingly dismissed the Contempt Case on 29.09.1999. However, on a request made by the learned counsel for the petitioner, the Division bench granted three months' time for payment of the said excess fee from 29.09.1999.

Be that as it may, now the sole ground on which the application for lease given by the petitioner, dated 22.02.1994, was rejected is that the petitioner has not produced the said clearance certificate. The revisional authority dismissed the revision on 06.10.1999, just within 15 days from 29.09.1999, holding that the order passed by the original

authority refusing to grant lease on the ground of non-production of clearance certificate is valid. When once this Court has given three months time for payment of the arrears due, the said period expires only by 28.12.1999. Hence, it cannot be said that non-payment of the arrears due and non-production of clearance certificate are intentional. The first respondent should have waited till 28.12.1999 for production of the said clearance certificate and if the said certificate is not produced even after lapse of three months, it is open for the authorities to pass appropriate orders. In fact, in Contempt Case No.855 of 1999, it is clearly admitted by the petitioner that it is ready to pay the excess seigniorage fee, provided sufficient time is given, and based on the said statement only, this Court granted three months' time. Hence, this Court is of the view that the order passed by the revisional authority, vide Memo dated 06.10.1999, is liable to be set aside and the matter shall be remitted back to the first respondent for considering afresh.

At this juncture, learned counsel for the petitioner submits that the petitioner paid entire arrears as on today and the competent authority also issued the said clearance certificate to the petitioner.

In the light of the said submission, the Writ Petition is allowed and the matter is remitted back to the first respondent, who shall consider it afresh and pass appropriate orders in accordance with law. There shall be no order as to costs.

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24.04.2007

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